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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,306	02/09/2001	Daniel Pompei Cedrone	1246.1	6764

21176 7590 10/11/2002

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EXAMINER

PICKARD, ALISON K

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 10/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/780,306

Applicant(s)

POMPEI, DANIEL

Examiner

Alison K. Pickard

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 5, 7-11, 15-19, 21, 22, 24-28, and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '767 in view of Suska (3,921,225).

JP '767 discloses a gravity hinge (and gravity gate) comprising an upper cylindrical knuckle 9 having a first surface and an opposing second, oblique surface 13, a lower cylindrical knuckle 8 having a first, oblique surface 12b and a second surface, and a spindle 10. The knuckles are tubular and receive the spindle. JP '767 does not disclose a bushing that separates the upper and lower knuckles. Suska teaches a bushing between knuckle surfaces. Suska teaches that the bushing extends the life of the hinge, lowers friction, lessens noise, and is maintenance free because the bushing is self-lubricating. The bushing can be made of a polymer or can have a coating (can be a laminate, see col. 5, lines 23-27). The bushing has a lower coefficient of friction than the knuckle surfaces. The bushing has a cylindrical sleeve that surrounds the spindle. The bushing surfaces coordinate with knuckle surfaces, and therefore would be made oblique. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the hinge of JP '767 with the bushing of Suska to extend the life of the hinge, reduce noise and friction, improve wear, and eliminate maintenance.

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3. Claims 1-3, 5, 6, 8-11, 15-20, 22, 23, 25-28, and 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes (4,697,306) in view of Suska.

Rhodes discloses a gravity hinge (and gravity gate) comprising an upper cylindrical knuckle 22 (or 27a) having a first surface and an opposing second, oblique surface 29 (28), a lower cylindrical knuckle having a first, oblique surface 13, 24 and a second surface, and a spindle 11, 23. The spindle extends from the first surface of the lower knuckle into a recess in the upper knuckle. The spindle is integral with the lower knuckle. Rhodes does not disclose a bushing that separates the upper and lower knuckles. Suska teaches a bushing between knuckle surfaces. Suska teaches that the bushing extends the life of the hinge, lowers friction, lessens noise, and is maintenance free because the bushing is self-lubricating. The bushing can be made of a polymer or can have a coating (can be a laminate, see col. 5, lines 23-27). The bushing has a lower coefficient of friction than the knuckle surfaces. The bushing has a cylindrical sleeve that surrounds the spindle. The bushing surfaces coordinate with knuckle surfaces, and therefore would be made oblique. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the hinge of Rhodes with the bushing of Suska to extend the life of the hinge, reduce noise and friction, improve wear, and eliminate maintenance.

Regarding claims 5, 6, 22, and 23, making the spindle integral with the upper knuckle and extending into a recess in the lower knuckle is considered a design choice. See *In re Gazda*, 104 USPQ 400 (CCPA 1955). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to reverse the parts such that the spindle is integral with the upper knuckle and extends into the lower knuckle as a matter of choice in design.

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4. Claims 12-14 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes in view of Suska as applied to claims 1 and 17 above, and further in view of Gidseg (4,864,691).

Rhodes does not specify the material of the knuckles. Gidseg teaches art equivalent materials for hinge knuckles (see col. 11, lines 32-42). Gidseg teaches metal, polymers, and ceramics as art equivalent materials for hinges. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the hinge knuckles of Rhodes out of metal, ceramic, or polymers as such are taught to be art equivalent materials by Gidseg.

Response to Arguments

5. Applicant's arguments filed 7-31-02 have been fully considered but they are not persuasive.

As described above, both JP '767 and Rhodes disclose a gravity hinge having upper and lower knuckles and a spindle. Both the upper and lower knuckles have oblique surfaces as required by the claims. Suska teaches a bushing between mating knuckle surfaces. The bushing is configured to mate with the surfaces it contacts. In response to applicant's argument that the Suska bushing is incompatible with the hinges of JP '767 and Rhodes because it is not oblique, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Suska teaches a bushing that is configured to mate with and between two adjacent knuckles. It is this teaching that is being

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applied. JP '767 and Rhodes already disclose the oblique surfaces, so the bushing surfaces would also be oblique.

In response to Applicant's arguments regarding a flat portion in JP '767 and a projection in Rhodes, the claims use the term "comprising" which indicates an open claim. As stated above, JP '767 or Rhodes in view of Suska (in view of Gidseg) disclose the limitations as required by the claims. Further, it does not appear that either item would affect the modification in view of Suska. For example, the pin to which Applicant refer in Rhodes enables portion 32 to rotate with the hinge. It does not appear that either the pin or portion 32 would be affected by a bushing.

Finally, in response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 703-305-0882.

The examiner can normally be reached on M-F (9-6:30), with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on 703-308-3179. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-8729327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.


Anthony Knight
SPE
Art Unit 3676

AP

October 9, 2002